



SENATE BILL 265: Bond Referendum Transparency.

2021-2022 General Assembly

Committee:	Senate Finance. If favorable, re-refer to Rules and Operations of the Senate	Date:	April 21, 2021
Introduced by:	Sens. Johnson, Ford	Prepared by:	Cindy Avrette
Analysis of:	First Edition		Staff Attorney

OVERVIEW: *Senate Bill 265 would change the procedures for the authorization of general obligation bonds by local governmental units. It would require the Local Government Commission to obtain the following information that must be included in its authorizing order, and included in the ballot question:*

- *Estimated interest to be paid on the bond issue.*
- *Effect on property tax base.*
- *Information regarding two-thirds bonds capacity.*

CURRENT LAW: Article 4 of Chapter 159 of the General Statutes (Local Government Bond Act) governs the ability of local government to borrow money secured by a pledge of the taxing power. When a local government proposes to issue bonds that must be approved by a vote of the people,¹ it must publish a notice of intent to apply to the Local Government Commission (LGC) for approval. After considering an application, the LGC enters an order either approving or denying the application after considering several factors. The LGC must approve the application if it determines the following:

- The proposed bond issue is necessary or expedient.
- The proposed amount is adequate for the proposed purpose.
- The unit's debt management procedures are good, or that reasonable assurances have been given that its debt will be managed in strict compliance with the law.
- The increase in taxes, if necessary to service the proposed debt will not be excessive.
- The proposed bonds can be marketed at reasonable rates of interest.

After or at the same time the application is filed with the LGC, a bond order must be introduced before the governing board of the local government. Once introduced, the board must schedule a public hearing. Before the public hearing, the finance officer of the local government unit must file a statement with the clerk and the LGC indicating the estimated total amount of interest that will be paid on the bonds over the expected term of the bonds and a summary of the assumptions upon which the estimate is based, with a

¹ Bonds issued for the following purposes do not require voter approval: (1) to suppress riots, insurrections, or any extraordinary breach of law and order; (2) to supply an unforeseen deficiency in the revenue when taxes actually received or collected during the fiscal year fall below collection estimates made in the annual budget ordinance; (3) to meet emergencies threatening the public health or safety, as conclusively determined in writing by the Governor; (4) to refund outstanding general obligation bonds or general obligation bond anticipation notes; (5) bonds as described in G.S. 159-49(2). There are also certain other purposes for which no vote is required to the extent of two-thirds of the amount by which the outstanding indebtedness of the issuing county, county water and sewer district, metro water district, or city was reduced in the preceding fiscal year.

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proviso that the estimated amount of interest is preliminary, is for general informational purposes only, and that the validity of the bonds may not be challenged on the basis of the actual interest being different than the estimated interest once the bonds are issued.

The bond order must be published after it has been introduced and again after it has been approved. Upon publication after introduction, it must include a statement describing the amount of the proposed bonds, indicating that a tax may be levied to pay the principal and interest on the bonds, and announcing when the public hearing will be held. Upon publication after adoption, it must include a statement that any action challenging the validity of the order must commence within 30 days after the date of publication of the notice. Each publication must include a statement in the order that the finance officer has filed a Statement of Estimated Interest and indicating what the estimated amount is. A summary of the assumptions may be included in the publication and disclaimer language must be included to the effect that the estimated amount of interest is preliminary, is for general informational purposes only, and that the validity of the bonds may not be challenged on the basis of the actual interest being different than the estimated interest once the bonds are issued.

Once a bond order is approved by the governing board, and the bond order published a second time, a referendum must be held. The General Assembly amended the ballot question S.L. 2013-200 to require it to say that the bonds will be repaid *plus interest* and that taxes may be levied to pay the principal and interest on the bonds. The ballot question reads:

"Shall the order authorizing \$ _____ bonds plus interest for (briefly stating the purpose) and providing that additional taxes may be levied in an amount sufficient to pay the principal of and interest on the bonds be approved?

[] YES

[] NO"

Once the bond order is approved by the voters, bonds may be issued under it at any time within seven years after the order takes effect and up to 10 years with LGC approval. Any action contesting the validity of a bond referendum must begin within 30 days after the publication of the results. After this time, no right of action may be brought. Chapter 142 governs the issuance of State debt.

BILL ANALYSIS: Senate Bill 265 would require the LGC to obtain the following information from the issuing unit and include it in its authorizing order:

- Estimated debt service on the bonds using the highest interest rate charged when looking at the immediately preceding years for a term equal to the maximum issue term of the proposed bond.
- The amount of property tax increase necessary to pay the debt service on the bonds.
- Notice that the unit may issue, without a vote, additional general obligation debt in an amount of up to two-thirds of the amount of the proposed bond as the debt is retired.

The bill would require the same information to be included on the ballot question.

EFFECTIVE DATE: The bill would become effective when it becomes law and apply to bonds proposed on or after date.

BACKGROUND: The courts have consistently held that the bond order submitted to the voters constitutes a contract between the governmental entity and the voters. Great care is taken to ensure the accuracy of the ballot question because bonds may be issued as many as 10 years after the bond referendum. Bond counsel would strongly advice that the ballot question should not include specific information regarding interest rates, interest costs, property tax increases, etc. because the ballot is not a good place to include all the assumptions, qualifications, exceptions and provisos that would be necessary

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to ensure the validity of the bonds. The inclusion of these provisions would make the ballot question long and probably more difficult to read.

The additional information required by Senate Bill 265 is more nuanced in practice than the language may make it appear. Interest rates may vary over the bond period and based upon the type of bond ultimately issued. General obligation bonds do pledge the taxing power of the issuing unit, but often other sources of revenue are used to service the debt. Requiring a statement as to the amount of any property tax increase necessary to pay the debt service may be misleading when the issuing unit uses other sources of revenue to service the debt. It also assumes the property tax values and rates remain static over time. Over the life of a bond, the property tax values of the issuing unit may be adjusted through a reappraisal and tax rates may vary annually based upon the tax base.

The North Carolina Constitution and statutory provisions allow the issuance of new general obligation debt in a fiscal year without a ballot referendum in an amount up to two-thirds of the net reduction of general obligation debt in the prior fiscal year. The requirement in the bill that the bond order and ballot question include a statement that the approval of the debt would allow the issuing unit to issue two-thirds of the principal amount authorized without voter approval in a future year may be misleading. The two-thirds calculation is not as simple as taking the amount of the bonds authorized and concluding that another two-thirds of that amount can and will be issued. The calculation is made annually based on the net principal reduction of all outstanding general obligation debt for the given fiscal year, not on an issue-by-issue basis. Also, the eligible two-thirds amount may not be economically feasible. All general obligation debt must be approved by the LGC using the same metrics as described earlier in the analysis.